

1 to sue who?

2 MR. LEVY: Mr. Carroll, can we  
3 have an understanding that there's no waiver  
4 if I allow him to answer the question?

5 MR. CARROLL: I'm not going to  
6 serve waiver on this.

7 THE WITNESS: Okay. What I  
8 thought of in 2004 was if things came -- if  
9 there were no deal, then would there be a  
10 cause of action at that time. That ultimately  
11 was a hypothetical because there was a claim.

12 BY MR. CARROLL:

13 Q By your client against mine,  
14 correct?

15 A Absolutely.

16 Q Okay. That's what I wanted.

17 A You're the vertically integrated  
18 carrier, Mr. Carroll, and the FCC says that.

19 JUDGE SIPPEL: Don't volunteer,  
20 Mr. Hawkins. Please sir.

21 THE WITNESS: No, I understand.

22 JUDGE SIPPEL: Cross examination,

1 he's entitled to ask questions and get  
2 answers.

3 MR. CARROLL: Okay. Let me move  
4 on and let me mark an exhibit and this has  
5 been some of the documents we're using in  
6 cross that were not pre-marked for direct,  
7 Your Honor. We put exhibit numbers then  
8 already and I have copies to give to the  
9 witness, to Your Honor and to my colleagues on  
10 the other side.

11 JUDGE SIPPEL: So are these  
12 numbers following the sequence of what we've  
13 received in evidence?

14 MR. CARROLL: More or less. I  
15 picked them up at 300 mark because you  
16 remember ours ended at roughly 280 something.  
17 I'm going to use some of those. But there are  
18 a couple of documents that are going to be new  
19 and I started with the 300 sequence and  
20 they're all numbered for the Court.

21 JUDGE SIPPEL: Well, as long as --  
22 That's fine as long as -- They're identified

1 as a Comcast exhibit that you're bringing in?

2 MR. CARROLL: Comcast exhibit and  
3 it's their document. These are documents that  
4 they produced to us.

5 JUDGE SIPPEL: Well, the witness  
6 can identify --

7 MR. CARROLL: Exactly.

8 JUDGE SIPPEL: You can go through  
9 that.

10 MR. CARROLL: This is the witness'  
11 email.

12 JUDGE SIPPEL: Okay. Do we  
13 understand -- Just a second. Let me just --

14 (Off the record discussion.)

15 Yes, we can file that. We can  
16 handle that, Mr. Carroll. You're okay.

17 MR. CARROLL: Your Honor, may I  
18 approach to hand up?

19 JUDGE SIPPEL: Yes, you may hand  
20 up here and give the court reporter a copy.

21 MR. CARROLL: Okay.

22 JUDGE SIPPEL: And then everybody

1 else who is interested gets one, too.

2 MR. CARROLL: Two for the bench?

3 JUDGE SIPPEL: Two will be fine if  
4 you have them.

5 MR. CARROLL: I do.

6 JUDGE SIPPEL: Thank you.

7 MR. LEVY: Mr. Carroll, do you  
8 have any for us?

9 MR. CARROLL: I'm sorry. Here you  
10 are.

11 MR. LEVY: Thank you.

12 MR. CARROLL: I don't want to  
13 leave you out.

14 (Whereupon, the document referred  
15 to was marked as Comcast Exhibit  
16 No. 324 for identification.)

17 BY MR. CARROLL:

18 Q Mr. Hawkins, we've handed you  
19 what's been marked as Comcast Exhibit 324. It  
20 has a couple of emails on the page and the top  
21 email is from yourself dated July 17, 2004.  
22 Is that right?

1 A Yes.

2 Q You've had a chance to read it?

3 A No, I'm in the middle of reading  
4 it.

5 Q All right.

6 A Okay.

7 Q Have you read it now?

8 A Yes.

9 Q Okay. This is an email you wrote  
10 to Mr. Rolapp on July 17, 2004.

11 A yes.

12 Q Who is Mr. Rolapp please?

13 A Mr. Rolapp at that time was an  
14 analyst working for the NFL Network.

15 Q Okay. Did he work for you?

16 A He worked with me.

17 Q And this is before the contract  
18 with my client is signed up in July of 2004,  
19 right?

20 A Correct.

21 Q About three or four weeks before  
22 it gets signed, agreed?

1           A       Agree.

2           Q       So you're in the middle of  
3 negotiations with my client at this time.

4           A       Yes.

5           Q       And you say, you can follow along  
6 with me, "Spoke with PT on Comcast." PT, who  
7 is that?

8           A       Commissioner Tagliabue.

9           Q       "Told him that I liked the deal."  
10 So the deal you're referring to is the 2004  
11 contract with my client, right?

12          A       Yes.

13          Q       So you stand by this? You told  
14 Mr. Tagliabue. Remember I asked you if you  
15 signed off, if you were okay with the deal.  
16 This is the email in which you told him you  
17 liked the deal.

18          A       If you continue on it's like the  
19 deal because of certain aspects. There were  
20 others that I thought were inadequate at that  
21 point.

22          Q       Okay.

1           A       Inadequate I think is the best way  
2 to put it.

3           Q       You liked the deal because of the  
4 VOD license component. VOD, is that video on  
5 demand?

6           A       Yes.

7           Q       And there was a VOD component to  
8 the contract that got signed with my client,  
9 right?

10          A       Yes.

11          Q       Okay. In which my client got VOD  
12 rights to games under the contract, correct?

13          A       VOD, we had an obligation. We,  
14 the NFL Network, has an obligation to deliver  
15 certain types of VOD product including game  
16 highlight packages, yes.

17          Q       And then you go on to say, "But  
18 that I thought the value was to clearly tied  
19 to Sunday Ticket."


20          A       Yes.

21          Q       Now "tied" in the sense of this  
22 tiering right, right?

1           A       In the sense that I'm trying to  
2     put myself four years, five years in the past.  
3     But the way that I would describe it as I  
4     recall what I was saying is that at this point  
5     Comcast was seeking an absolute tiering right  
6     if they didn't get Sunday Ticket and I thought  
7     that that was too clearly tied by your client  
8     to Sunday Ticket.

9           Q       I'm just asking for the  
10    explanation. The tie that you're describing  
11    is this tiering right that said if Comcast  
12    didn't get Sunday Ticket they could tier the  
13    NFL Network. Is that correct?

14          A       The tie is the tiering right, yes.

15          Q       Good. And then you say, "The   
16    minutes of VOD highlights per game was too  
17    much but probably a point we couldn't  
18    revisit." I've read that right, yes?

19          A       Yes.

20          Q       And you're saying there is you  
21    thought you gave up too many minutes of VOD.  
22    You could have gotten away with giving my



1 client less VOD minutes, right?

2 A I thought that the product wasn't  
3 going to be that good and we could have done  
4 a shorter package that I think would have been  
5 better.

6 Q Okay. And then you say, "And that  
7 if they continue to get..." The "they" there  
8 is Comcast, right? "They continue" --

9 A Yes.

10 Q -- "to get the same VOD deliveries  
11 after they tier us we've given them too little  
12 disincentive to tier (since we'd be on a  
13 sports tier, the subscriber still getting us  
14 would be precisely the ones who would most  
15 value the VOD." And this paragraph goes on  
16 and on. Do you want me to read the whole  
17 thing or have you read --

18 A No, that's fine.

19 Q So what you're saying here is that  
20 you were projecting forward in time and saying  
21 to yourself Comcast had a tiering right here  
22 and maybe they'd exercise it because if they

1 didn't get Sunday Ticket they'd still have  
2 these VOD rights, correct?

3 A I was saying that they were not  
4 enough disincentives in this contract to tier.

5 Q Economic disincentives.

6 A Economic and programming, sir.

7 Q But you were actually anticipating  
8 in your head and as you wrote this email the  
9 day when my client would tier your  
10 programming, correct?

11 A I was anticipating that your  
12 client might want to tier the programming at  
13 some point and I was trying to figure out  
14 whether they would do so. We wanted to make  
15 it something where they wouldn't just do it at  
16 the drop of a hat. That was a clear  
17 instruction that I had gotten. On the other  
18 hand, they were bargaining for a tiering right  
19 in certain narrow circumstances and they  
20 clearly were going to have a tiering right.  
21 They have a conditional tiering right under  
22 the agreement.

1           Q       Yes. And my question was simpler.  
2   You were looking forward in this email to a  
3   day two years later when my client would tier  
4   the network and asking yourself, "What could  
5   you do economically to make it less likely  
6   they would do that?" Can you answer that  
7   question yes or no?

8           A       I was doing what any good  
9   negotiator would do in trying to think through  
10   contingencies. So, yes, I was looking  
11   forward.

12          Q       Thank you, Mr. Hawkins. By the  
13   way, did you ever tell my client, Comcast, in  
14   2004 when you were involved that there would  
15   be anything illegal if they exercised their  
16   tiering right under the contract you were  
17   negotiating?

18          A       I don't believe that I ever spoke  
19   directly to your client about that original  
20   carriage agreement, sir.

21          Q       Oh. You did have at least one  
22   conversation you've testified to about with my

1 client including Mr. Roberts. Remember?

2 A I testified that I attended a  
3 meeting at which among other things NFL  
4 Network carriage was discussed.

5 Q Right. That's -- You made a  
6 pitch. You were at a meeting, were you not,  
7 before the negotiations got underway in  
8 detail? You were at a meeting with my client  
9 including Mr. Roberts when you were making the  
10 pitch for my client to carry NFL Network,  
11 right?

12 A No.

13 Q That's not what that meeting was.

14 A I'm not saying that I wasn't at  
15 such a meeting. You being the NFL. You being  
16 me. I said I did not speak to your clients,  
17 sir.

18 Q Do you remember you were asked at  
19 your deposition about a meeting that you  
20 attended that included Mr. Roberts, the CEO of  
21 Comcast, at the beginning of negotiations?

22 A Yes.

1           Q       Do you remember you testified that  
2   you were at the meeting and you testified  
3   about the discussion that happened at that  
4   meeting?

5           A       Correct.

6           Q       And that was a meeting where the  
7   NFL was trying to, was making a pitch trying  
8   to convince Comcast to carry the NFL Network,  
9   correct?

10          A       Mr. Carroll, perhaps we can cut to  
11   the chase. You asked me "Did you" and I took  
12   that to mean me personally have any  
13   discussions. I was at such a meeting. I'm  
14   often silent at meetings. I did not have any  
15   direct role at that meeting nor to the best of  
16   my recollection did I ever discuss directly  
17   with your client any of the terms and  
18   conditions of the Comcast affiliation  
19   agreement.

20          Q       All right. Thanks for that  
21   clarification, but so am I right because you  
22   testified at your deposition you were at the

1 meeting?

2 A Yes.

3 Q You remember there was a  
4 discussion at the meeting, I guess you didn't  
5 talk and at that meeting your client, NFL, was  
6 making a pitch to Comcast to carry the NFL  
7 Network, right?

8 A Yes.

9 Q Okay. And you remember at that  
10 meeting Mr. Roberts among other things because  
11 you testified to this also said that Comcast  
12 was disappointed they hadn't had Sunday Ticket  
13 and they really wanted Sunday Ticket. Do you  
14 remember that?

15 A Yes.

16 Q You didn't jump up in the middle  
17 of that meeting and tell Mr. Roberts "That's  
18 an FCC violation. You can't ask for Sunday  
19 ticket." Did you?

20 A No.

21 JUDGE SIPPEL: By the way, we have  
22 -- This document has to be marked for the

1 record for identification and moved into  
2 evidence.

3 MR. CARROLL: I wandered from it.  
4 Let me -- Your Honor, you're right to remind  
5 me. Let me come back to it and clean that up.

6 JUDGE SIPPEL: Yes, you can.

7 BY MR. CARROLL:

8 Q Exhibit 324, Mr. Hawkins, you've  
9 identified this as the email that you wrote at  
10 the top of the page, correct?

11 A Yes.

12 Q And the email below is one that  
13 Mr. Rolapp sent to you on July 16, 2004,  
14 correct?

15 A Yes.

16 Q And you had this email exchange  
17 back and forth, the two of you, in the course  
18 of your work for the NFL at the time, correct?

19 A Yes.

20 MR. CARROLL: I offer Exhibit 324  
21 into evidence.

22 JUDGE SIPPEL: Okay. It's

1 identified as you've identified and it is  
2 marked and received into evidence as Comcast  
3 Exhibit 324.

4 (The document referred to having  
5 been previously marked for  
6 identification as Comcast Exhibit  
7 No. 324, was received in  
8 evidence.)

9 Thank you.

10 MR. CARROLL: Thank you, Your  
11 Honor.

12 BY MR. CARROLL:

13 Q With respect to Sunday Ticket, you  
14 were personally involved in the negotiations  
15 with Direct TV for the Sunday Ticket package,  
16 correct?

17 A Yes.

18 Q And that contract was an exclusive  
19 contract with Direct TV, correct?

20 A Which contract? There is a  
21 sequence of contracts, Mr. Carroll. I assume  
22 we're talking about a 2002 contract which was



1 in effect at that time or 2004 contract which  
2 signed subsequent to the affiliation  
3 agreement. The 2002 contract was an exclusive  
4 contract, yes.

5 Q I mean 2004 was exclusive too.

6 A 2004 was exclusive too.

7 Q Yes. Were you involved in the  
8 contract that just got redone with the NFL and  
9 Direct TV a couple of weeks ago?

10 A No.

11 Q Okay. So you're not familiar with  
12 whether that's still exclusive.

13 A No, I'm not.

14 Q And the ones you were involved  
15 with, the '02 and '04, what was exclusive was  
16 only Direct TV was getting this Sunday Ticket  
17 package of games. Cable couldn't have it,  
18 right?

19 A For the terms of those contracts,  
20 that's correct.

21 Q And there's actually a provision  
22 in the contract that said we won't give this

1 Sunday Ticket package to cable, correct?

2 A In substance. I doubt that that's  
3 the wording, but in substance yes.

4 Q And there was one lump sum price  
5 for that package, that contract, correct?

6 A Paid yearly, yes. But it was a  
7 single price.

8 Q And for that lump sum price and  
9 since we're only among highly confidential  
10 colleagues here, do you remember how many  
11 billions of dollars that lump sum price was?

12 A Honestly no. '04 I remember, but  
13 not '02.

14 Q '04, how much was '04?

15 A [REDACTED]

16 Q [REDACTED]

17 A Yes.

18 Q [REDACTED]

19 A You've got the document there. I  
20 think that's correct, but it's been a long  
21 time since I've looked at it.

22 Q [REDACTED]

1           A       Yes. Assuming that you're correct  
2   in stating the figure.

3           MR. CARROLL: Your Honor, may I  
4   approach and just mark this for  
5   identification?

6           JUDGE SIPPEL: Yes, you may.

7           MR. CARROLL: Thank you.

8           JUDGE SIPPEL: This is a document  
9   on the National Football League stationary on  
10  November 8, 2004.

11          THE WITNESS: Can I get a copy?

12          MR. CARROLL: Forgive me for that.

13          THE WITNESS: Thank you.

14          JUDGE SIPPEL: And at the top of  
15  it is marked Comcast Exhibit 321. So the  
16  reporter will mark this document for  
17  identification as Comcast Exhibit 321.

18               (Whereupon, the document referred  
19   to was marked as Comcast Exhibit  
20   No. 321 for identification.)

21          You may proceed, sir.

22          MR. CARROLL: Thank you, Your

1 Honor. And let's do the offering into  
2 evidence piece up front.

3 BY MR. CARROLL:

4 Q Can you confirm, sir, and identify  
5 this as in fact the signed contract between  
6 NFL and Direct TV in 2004 for Sunday Ticket  
7 that you've just been handed?

8 A Let me just flip through the  
9 pages. Yes, I can, sir.

10 Q Okay.

11 JUDGE SIPPEL: Well, the signatory  
12 is NFL Enterprise. That is distinct from NFL.

13 MR. CARROLL: I'm about to ask  
14 about that.

15 JUDGE SIPPEL: I'm sorry. Okay.  
16 I didn't anticipate you.

17 MR. CARROLL: No, but it's good  
18 that we're going the same place.

19 BY MR. CARROLL:

20 Q You have answered that this is the  
21 contract, right?

22 A It is the NFL Sunday Ticket

1 contract dated 2004.

2 MR. CARROLL: Okay. So offer this  
3 into evidence as Comcast Exhibit 321, Your  
4 Honor.

5 JUDGE SIPPEL: Received in  
6 evidence.

7 (The document referred to having  
8 been previously marked for  
9 identification as Comcast Exhibit  
10 No. 321, was received in  
11 evidence.)

12 BY MR. CARROLL:

13 Q Now to follow up on His Honor's  
14 question, it's on the letterhead of the NFL  
15 and it's signed by Mr. Tagliabue who was the  
16 Commissioner of the NFL, but above the  
17 signature line it's on behalf of NFL  
18 Enterprises. Do you see that?

19 A Yes, I do.

20 Q Okay. Can you explain why we have  
21 -- And the offer that's recited in the first  
22 line is NFL Enterprises offers to sell to

1 Direct TV and the rights described are Sunday  
2 Ticket, correct?

3 A Yes.

4 Q So can you explain why we have an  
5 offer on the stationary of the NFL that's  
6 coming from NFL Enterprises for game rights  
7 that are owned by the NFL? Can you explain  
8 why that is?

9 A Your question is somewhat  
10 confusing.

11 Q Well, yesterday we had some  
12 colloquy with the Court about whether Sunday  
13 Ticket came from the NFL or from Enterprises  
14 and whether one was completely separate from  
15 the other. This contract recites that it's  
16 coming from NFL Enterprises. Is that right?

17 A Yes, it does.

18 Q Okay. And was the contract with  
19 Direct TV for Sunday Ticket with NFL  
20 Enterprises?

21 A Yes, it was.

22 Q Okay. And that's the same group,

1 NFL Enterprises, that had the contract with my  
2 client in 2004, the affiliation agreement.

3 A Yes.

4 Q And that's the same entity, NFL  
5 Enterprises, that's brought this litigation  
6 here in front of the FCC.

7 A Yes.

8 Q And that's the same entity, NFL  
9 Enterprises, that has filed the lawsuit in New  
10 York in 2006 to enforce its contract, correct?

11 A That I don't know.

12 Q Okay. And let me just flip you  
13 over if you go over to the page of the -- It's  
14 the third page in the exhibit. It's numbered  
15 two at the bottom. It has a reference to  
16 rights fees and NFL Network.

17 A Yes sir.

18 Q And it recites that their total  
19 nominal payments of [REDACTED] Do you see  
20 that?

21 A Yes.

22 Q Okay. So that's consistent with

1 what you were remembering a few moments ago I  
2 think, yes?

3 A Yes.

4 Q And now in addition to this, under  
5 this contract, this is what I want to ask  
6 next. In addition to getting the Sunday  
7 Ticket games, Direct TV also was carrying NFL  
8 Network. Is that right?

9 A Yes.

10 Q And the two were bound together in  
11 the same contract, weren't they?

12 A The two were covered in the same  
13 short form agreement. I think but I'm not  
14 sure that they are separate long form  
15 agreements.

16 Q In this contract that we're  
17 looking at, they're bound together.

18 A They are. That is correct.

● ● [REDACTED]  
● ● [REDACTED]  
● ● [REDACTED]  
● [REDACTED]





20 Q You add the games and then you  
21 could charge a surcharge, correct?  
22 A Correct.